A

# REVIEW

OF

# THE TRENTON DECISION

IN THE

# QUAKER CAUSE.

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BY AN EMINENT COUNSELLOR OF NEW JERSEY.

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"We maintain that, in matters of religion, no man's right is abridged by the institution of civil society; *and that religion is wholly exempt from its cognisance.*"—JAMES MADISON.

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men of America did not wait until usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the *consequences in the principle*, and they avoided the consequences by *denying the principle*. We revere this lesson too much, soon to forget it."

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"Because the bill implies, either *that the civil magistrate is a competent judge of religious truths, or that he may employ religion as an engine of civil policy*. The first is an arrogant pretension, falsified by the extraordinary opinion of rulers, in all ages, and throughout the world: the second, an unhallowed perversion of the means of salvation."

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TRENTON, N. J. OCTOBER 8, 1833.

*My dear sir*,—I yesterday received your obliging favor of the 4th instant. Its contents are important and highly gratifying. It is greatly to be regretted that the reporters who prepared notes for publication of the late hearing, do not seem to have possessed the tact necessary to have furnished a full and satisfactory narrative of the arguments. I am told that there is likely to be an entire failure in a due discharge of that important undertaking.* As the *orthodox* have for a long time been in possession of the public ear, by the mutilated book containing the arguments on their own side, it appears the more desirable to counteract their machinations by more ample publications than have as yet appeared. Although a few good things have occasionally appeared in the newspapers, yet they have been necessarily much limited. As the pressure of election matter has now passed by, I indulge a hope that we may be enabled to induce the Editor of the "Pennsylvanian" to publish, (at least in his weekly paper) something more fully approaching the substance of the whole case, on the part of Friends, than has yet been promulgated. How far the enclosed, with which I have taken some pains, may answer the purpose, I leave you to judge. You observe that it is our joint production, as in framing it, I have incorporated into it almost the whole of your sound and luminous observations. I am exceedingly clear that a publication of this character, or something very much like it, as speedily as possible, would be very desirable. If you cannot get it into the "Pennsylvanian," (on account of its length) perhaps it might be thought worthy of promulgation in a pamphlet form. I am sure it is important to do something, and that quickly, on a larger scale than has yet been effected. I commit it to your discretion.

The only part of your letter from which I dissent, is in your estimate of my talents and services in the cause of religious freedom, which are too highly prized by your partial friendship. In zeal and sincerity, I yield to none of my fellow labourers—in efficiency, influence and power to do good, to many. As to public life, my advancing years and habits of retirement, seem in a great degree to disqualify me. I never sought it, having in the vigor of my life declined some favorable opportunities apparently within my reach; at this period of my rapidly declining years, it would require a very strong call of duty, manifested by clear openings of Providence leading to such an issue, to induce me to embark on the troubled sea of political turmoil, to which if I am ever brought, it must be without any interference or solicitation, directly or indirectly, on my own part.

I remain, my dear sir, most sincerely and affectionately,
your assured friend,
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ELI K. PRICE, Esq.

* The writer is under some misapprehension in this respect. EDWARD HOPPER, who took down in short hand the arguments of all the able counsel in the cause, will shortly publish the speech of Samuel L. Southard, Esq., with entire accuracy, and the others in case he should receive sufficient encouragement.
THE PUBLISHER.

# REVIEW &c.

SIR—The independent and patriotic course which you have adopted, as the editor of a public journal, on occasion of a recent and flagrant attack on the civil rights and religious privileges of the people, by a late judgment of the Court of Appeals of New Jersey, in what has been called "*The Quaker Cause*," demands the respect of every American freeman. In this course I have no doubt you will persevere until the true merits of this oppressive, unconstitutional and illegal decision, are amply and extensively diffused through the whole community. This is all that is necessary to create a universal disapprobation of this erroneous and void decree. The facts in the case, when divested of their technical phraseology, and as far as they are necessary to a due comprehension of the cause, are substantially these:—A dispute arose among the Society of Friends, relative to the school fund of their meeting at Crosswicks, West Jersey. The party called orthodox (unquestionably proved to be a minority of the whole society) brought a bill in the Court of Chancery, claiming *the whole of the disputed property*. The Friends (miscalled Hicksites) contended for a fair division of the property in proportion to the relative numbers of the two parties, and explicitly offered to make an amicable settlement of the controversy on those terms. This reasonable offer was refused by the orthodox, who insisted on their pretended right to the *whole*. The cause came on for hearing in the Court of Chancery, and by the advice of two judges of our Supreme Court called to advise the Chancellor, (who before his election having been of counsel with one of the parties did not really participate in the decision,) an interlocutory decree and a final decree was made, confirming the *whole property* to the orthodox, and totally *excluding* the Friends from any participaton in those funds, more than three-fourths of which they had originally contributed. The latter filed their appeal from this *unrighteous* sentence, and brought it up for review in the Court of Appeals. They exhibited there various reasons, five in number, to show that it ought to be reversed, or at least modified. These were duly referred by their counsel, Messrs. Wall and Southard, and duly affiled of record. The second reason was as follows: "If the said *Court of Chancery* should not have declared that this petitioner and appellant was entitled to recover the whole money, due on said mortgage, (which

secured the school fund, then that the said *court ought to have declared* that in equity this petitioner and appellant was entitled to such a division or portion *of the said sum*, ratably and equally, as members of the society of Friends of the said Chesterfield Preparative meeting, designated in the said pleadings as Hicksites, *bear* to the members of the said Preparative meeting therein designated as Orthodox, or that the said school fund should be equally divided between the said two parties." The fifth reason for reversal was as follows: "That the said several decrees, and each of them, is and are erroneous, unjust and inequitable, on the pleadings and proofs in the said causes, and subversive of the legal and equitable rights of that portion of the Society of Friends to which this petitioner and appellant belongs, and an infringement of their religious and constitutional rights, and ought to be reversed or modified." These are the only material reasons necessary to be here stated for the purpose of understanding the question.

At the late sitting of the New Jersey Court of Appeals on full argument, that court thought proper to *confirm* the decree of the Court of Chancery, while at the same time they added an earnest recommendation to the parties of an accommodation of their disputes on just and reasonable terms. As the *Friends* had *always* been willing on their part to settle the dispute on these terms, and it was known that these overtures had been uniformly rejected by the Orthodox, it is truly incomprehensible *why*, when acting as a *Court of Equity* on an appeal from a decree in chancery, the Court of Appeals confirmed a decree which awarded to *one* of the parties, (and that a small minority,) the whole property in dispute, when they possessed an equal power to have *reversed that decree.* That the merits of the case were decidedly in favor of the Friends, (nicknamed by their adversaries Hicksites,) is not only self-evident, but was *virtually* admitted to be so by the court when they recommended a settlement of the controversy on the *very terms* which had so often been offered by the Friends. This case then presents the singular aspect of a Court of Equity holding an appellate jurisdiction, and therefore possessing an undoubted authority to decide the suit according to its real merits, instead of exercising *such right, absolutely* determining it *against those real merits*, by *confirming* a decree by which the *whole property* taken from one party, (though in a decisive majority,) and given *exclusively* to the minority, which property the court *admit by their own recommendation*, (what is otherwise very plain,) ought to have been *equitably divided;* or in other words, *the Court of Appeals,* holding chancery powers, *confirmed* a decree in chan-

cery evidently *repugnant to obvious and admitted principles of equity.* Now it is extremely clear, that the principles of equity expressly enjoin on all courts of chancery to consider "that as *done* which *ought to be done.*" Sir Joseph Jekyll, Master of the Rolls, a great chancery lawyer, lays this down as the strongest rule in equity, paramount to all others, as may be seen in 2d Vesey's Reports, p. 639, 1 Salk. p. 154. In the Supreme Court of Pennsylvania, Judges M'Kean and Yeates, 2d Dallas, pages 202 and following, recognize the same doctrine; yet the New Jersey Court of Appeals, in the recent decision, have destroyed this great and fundamental principle of equity, by confirming a decree which is so far from considering that *done which ought to be done*, that it sanctioned a *positive wrong*, justifying the *wrong doers* in refusing to do that which it is admitted that they *ought to have done.* Here then is a union of *palpable injustice* with gross inconsistency stamped on the character and face of this decision. But many evasions have been resorted to, in order to delude the public mind, and to conceal the enormity of this proceeding. Some of the members of this famous court have asserted, and caused it to be extensively circulated by their *creatures*, that they *greatly desired* to have made an *equitable division* of this school fund, but that their court, notwithstanding its high and plenary authority, had not the *power to do so*—an allegation so totally destitute of all colorable or plausible pretext, that it is astonishing that men can be found possessing an effrontery which enables them to insult the intelligence of mankind, by offering so absurd an excuse. It is contrary not only to the first principles of common sense, but of common law. The Court of Appeals being the court in the last resort in all cases of law and equity, is constitutionally vested with ample powers to do justice to the parties on the merits of the case, either by reversing or modifying a decree. It is a necessary incident to the power of every such court. I cite 1 W. Blackstone's Commentaries, 3d vol. p. 56. "There are these differences between *appeals from a court of equity*, and writs of error from a court of law. 1. That the former may be brought on any interlocutory matter, the latter on nothing but a definitive judgment. 2. Thatn *on writs of error, the house of lords* [the New Jersey Court of Appeals in its judicial capacity possessing equivalent powers] pronounces the judgment; *on appeals* it gives directions to the court below to rectify its own decree." But if for arguments sake, it should even be admitted that the Court of Appeals did not possess the power of modifying the decree by directing an equitable division of the property in question, it would avail nothing in support of the recent decision, inas-

much as they indisputably had full authority to *reverse the decree* appealed from, (which, as they admit ought to have made such division,) it was their positive and sacred duty to have effected. So that in either alternative the decision which they rendered was equally illegal and oppressive. 2d. Although the question of law and justice appears undeniably clear in in favor of the Friends, contemplating the subject in the point of view in which it has been already considered, yet there is another, and with reference to public and general interests, a much more important light in which the subject ought to be discussed. This decree seems to rest on a pretence that the Friends, in their religious course, have departed, in point of doctrine and discipline, from the ancient faith of the Quakers, and that on account of such departure the court were bound to render a judgment of forfeiture against them, by which they are deprived of their property, which is given to the Orthodox, under the plea that they are the only section of the society who have adhered to the sound principles contained in the ancient faith of the sect. Thus it is plain that the court has assumed the authority of investigating the religious faith of parties—of hearing and judging of evidence concerning it—comparing such evidence with their own ideas of the faith of the founders of religious sects, and of passing property from one party to another on the judgment of a court founded on such inquiries. This monstrous and alarming doctrine, so repugnant to the chartered rights of American freemen, is openly avowed by both of the judges who advised this decree to be made. In page 41 of the book published, Judge Ewing says:—"I do most unqualifiedly assert and maintain the power and right of *this court*, and of *every court in New Jersey*, to ascertain, by competent evidence, what are the religious principles of any man or set of men, when, as may frequently be the case, civil rights are thereon to depend, or thereby to be decided." Judge Drake also, in various parts of his opinion, is equally explicit. In pages 84 and 85 he says, "that the *Friends*, (as represented by S. Decow) insist that any inquiry into their doctrines further than as they have publicly declared them is inquisitorial, and an invasion of their rights of conscience," to which his honor boldly answers, avowing "that *if a fact be necessary* for the purpose of settling a question of property to be ascertained by this court, it is its duty to ascertain it by such evidence as the nature of the case admits of," and cites a late case from one of the reports of Merivale, an English reporter, of a decision of Lord Eldon, a high prerogative judge, who has avowed arbitrary sentiments, which it is much doubted whe-

ther, at this day, they would be considered law, even in the monarchical and priestridden realm of England. It is clear that Judge Ewing rested his opinion on the ground that Decou and the Friends had departed from the discipline, and that Judge Drake founded his advice on the pretext that they varied from the doctrines of the original founders of the Quaker sect. On these grounds they advised a decree by which they are excluded from their standing in that sect, and their property incurring a forfeiture, is violently wrested from them. These proceedings are unconstitutional, void, illegal, and in the most direct repugnance to sacred rights vested in the *freemen* of New Jersey by the most *positive charters*, which I proceed to demonstrate by conclusive documents. This question respecting the civil and religious rights of the freemen of New Jersey is not to be tested by the production of English authorities, containing the adjudications of English courts, reasoning by analogy where the circumstances attending the cases cited are not analogous, and especially where they are totally variant from those to which they are applied, is a most fallacious and delusive mode of reasoning, which so far from elucidating a subject, has a direct tendency to perplex and obscure the truth. The English cases can have no application to the state of things in this country in relation to religious matters. As well might the whole English hierarchical system of tithes, patronage, ecclesiastical benefices, and penal exactions be saddled at once on the American people, as to take away their property under a pretence of their being unsound in religious faith or practice, and support such enormities under the colour of English law. To ascertain our relative rights and duties on these subjects, we must resort, not to *English*, but to American souces of law. The state of New Jersey was, in its early colonial state, a Proprietary Government, as was also Pennsylvania. New Jersey was branched into two divisions, East and West. Before the proprietors of West Jersey could effect that increase of population of hardy and independent freemen with which their interests imperiously required their colony to be filled, they were obliged, in the most solemn and positive terms, to stipulate in their grants and *concessions* for the most ample, full, free, and perfect enjoyment, by the people, of the inestimable rights of civil as well as religious liberty. On the 3d day of March, A. D. 1676, Edward Bylynge and others of the proprietors of West Jersey, granted and conceded, as the charter or fundamental laws of West Jersey, certain inalienable privileges, not subject to any revocation or alteration by future legislation, which for ever established the principles of civil and religious

for the Court of Appeals of New Jersey, in an enlightened age, refining on and greatly enlarging the monkish cruelties of the fifteenth century, to apply to their fellow citizens the consequences of these preposterous and abominable principles. Yes, be it for ever remembered, that this *famous* (I had almost said infamous) court, scornfully rejected the solemn profession made by the Friends, of their belief in the holy scriptures and the doctrines of ancient Friends, in the face of which they arbitrarily wrested from an unoffending people their property, and transferred it to their adversaries. It has been fashionable among many, (and with none more than the strenuous advocates of the orthodox decree in question,) to exclaim with great acrimony against President Jackson, as if he were plotting to destroy the liberties of the people. Alas! if that illustrious man, instead of having so often braved death in his country's cause, had really been guilty of those things of which he is falsely accused by his enemies, yet is the *little finger* of the Court of Appeals *thicker on the people*, than would have been the brave old General's *loins!* Had he chastised them with *whips*, the New Jersey Court of Appeals, like the wicked Rehoboam, chastises them with *scorpions!* The advocates of this iniquitous decree, much pressed to find reasons to maintain it in the public opinion, have, in their arguments, occasionally placed much reliance on the private characters, as well of the governor and counsellors, as of the Judges by whose advice it was framed. But a reference to such a source forms a very unsatisfactory ground of justifying a judicial proceeding. Of the two judges and seven members of the court who sanctioned this proceeding, nine in the aggregate number, it is highly probable that there is a diversity of character, and the truth may be that some of them may be very good men, while others may be very bad. But I totally protest against referring to any such test in investigating important questions of constitutional law. The pages of biography teach useful lessons, which ought to warn us against resorting to any such auxiliary considerations. In the sixteenth century, in England, the great Lord Chancellor Bacon was more celebrated for his learning than any man of his age, and withal made a very high profession of religion; yet there is nothing more certainly attested in the English history than the mortifying fact, that finally it was fully proved that many of those famous opinions, from which, at the time of their delivery, he derived so much reputation, were obtained by direct bribery, for which he was afterwards accused, and on full evidence convicted, fined and imprisoned, by the judgment of his peers,

in the high court of parliament.* So also at a subsequent period, Lord Chief Justice Hale was so celebrated for his judicial wisdom, that according to his admirers he almost eclipsed the fame of Solomon himself; and his piety so much celebrated by his friend Bishop Burnet, and others of his sectarian friends, that he has been almost canonized as a saint; yet it is notorious that he rendered judgment of death against several poor wretches convicted before him on accusation of witchcraft, who were actually burned for that pretended crime, which example was followed by the early Puritans of Massachusetts. It appears also, from the writings of the same *great judge*, that he denounced the whole body of the Quakers as heretics, and it is quite probable that, under the influence of his contemporary precepts, his New England friends strung up a few poor and unprotected Quakers, punishing their bodies for the good of their *souls*. I verily believe the day is not far distant when the decree of our New Jersey Court of Appeals in the Quaker case, will, by all good men, be viewed with the same abhorrence with which these execrable acts are condemned. The *moving principle* was the same—all perpetrated under color of law, *by judgment of courts of law*. The one robbed the sufferers of life; the other, of reputation and property. "He takes my life, (says the immortal bard of Avon,) who takes the means whereby I live; and he who filches from me my good name, robs me of that which not enriches him, but makes me poor indeed."

To conclude. This recent decision ought not and cannot furnish a precedent to justify future and similar wrongs. That great and good man, the late Chancellor Kent, of New York, in the first volume of his admirable commentaries, from pages 442 to 446, has some remarks so directly applicable, that I shall conclude this article by the following extract from him: "There are one thousand cases to be pointed out in the English and American books of reports, which have been overruled, doubted, or limited in their application. It is probable that the *records of many of our courts in this country are replete with hasty and crude decisions*, and *such cases ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error.* Even a series of decisions are not always evidence of law." There was never a decision rendered in any court whatever, to which these judicious observations could be applied with

* Bacon's Works, vol. 6, p, 142.

more justice, than to the recent judgment in the Quaker cause, the principles of which strike at the foundation of the dearest privileges of every man in the community. It is time that the people were aroused from their false security; for if they now submit, and quietly suffer the chains preparing for them to be rivetted, they will certainly be, and will deserve to be, slaves.

CATO.

*Hunterdon County, N. J. Oct. 8th,* 1833.